

GREGORY N. HARRINGTON

IBLA 82-699

Decided June 10, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 26842 (Wash.) through OR MC 26845 (Wash.).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements either of the Federal Land Policy and Management Act of 1976 or of 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest

the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory requirements.

APPEARANCES: Gregory N. Harrington, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gregory N. Harrington appeals the March 18, 1982, decision of the Oregon State Office, Bureau of Land Management (BLM), which declared the unpatented Eline, Argreg, Ora, and Evang lode mining claims, OR MC 26842 (Wash.) through OR MC 26845 (Wash.), abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM during 1981.

Appellant states that he did the requisite assessment work and recorded his evidence in Whatcom County, Washington, but that the copy of the recorded document was not returned to him until January 9, 1982, because of mishandling by the Postal Service. He transmitted the copy immediately to BLM where it was received January 14, 1982. 1/

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM a copy of evidence of the assessment work performed on the claim, or a notice of intention to hold the claim, within 3 years after the date of the Act, i.e., on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(a) (1976). The statutory requirements and consequences are repeated in 43 CFR 3833.1-2, 3833.2-1, and 3833.4.

[1, 2] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. Such filing must be made both in the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment of recording in the proper county of evidence of assessment work or notice of intention to hold the mining claims does not relieve the owner of the claims from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Johannes

1/ Regulation 43 CFR 3833.2-2 provides that evidence of assessment work shall be an exact legible reproduction or duplicate of the affidavit of assessment work performed which was or will be filed for record. Appellant could have filed copies of the affidavit of assessment work simultaneously in Whatcom County and with BLM.

Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Elizabeth Francis, 60 IBLA 6 (1981); Fahey Group Mines, Inc., 58 IBLA 381 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, *supra*. As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

